
(2020) 03 CAL CK 0039
In the Calcutta High Court
Case No : Writ Petitions (WP) No. 783 Of 2009

Amlan Ghosh

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

Date of Decision : 06-03-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Kolkata Municipal Corporation Act, 1980 — Section — Section 400, 400(1), 400(5), 415

Citation : (2020) 03 CAL CK 0039

Hon'ble Judges : Ravi Krishan Kapur, J

Bench : Single Bench

Advocate : Alope Kumar Ghosh, Nilanjan Chatterjee, Biswajit Mukherjee, S. K. Debnath

Final Decision : Allowed

Judgement

Ravi Krishan Kapur, J

1. This petition is directed against an order dated 1st August, 2008 passed by the Municipal Building Tribunal in BT Appeal No.32 of 1999 (Sri

Dijendra Chandra Roy vs. Municipal Commissioner and Ors.). By the impugned order the Tribunal had inter alia set aside an order passed in

Demolition Case No.54-D/1999-2000 passed by the Special Officer dated 9th September, 1999.

2. The facts culminating in the filing of this petition are as follows:

(a) The petitioner is the owner of a flat situated on the eastern side of the first floor of a building located at premises no.4B, Subgachi Second Lane,

Kolkata." 39. The petitioner had purchased the flat by a deed of conveyance dated 23 July, 1997. The private respondent no.4 is the owner of the

flat on the western side of the first floor of the same premises.

(b) It is alleged on behalf of the petitioner that after the purchase of the said flat, the petitioner found that the alignment of the partition wall on the first floor of the flat was not in the same vertical line with the partition wall of the ground floor as shown in the sanctioned plan. In fact, according to the petitioner, the wall had been pushed inside the flat of the petitioner causing a variation of 0.80 meters on the eastern side. Thus, the disputed partition wall as alleged by the petitioner had been shifted inside his flat on the eastern side. This according to the petitioner was in deviation of the sanctioned building plan.

(c) Thus, the crux of the complaint of the petitioner pertains to the shifting of a partition wall inside his flat contrary to and in violation of the sanctioned plan.

(d) Upon a complaint being lodged by the petitioner with the Municipal Authorities, an inspection was carried out on 4 January, 1999 and the Inspection Officer detected an unauthorized construction and issued a notice under Section 400 (1) of the Kolkata Municipal Corporation Act, 1980 (the said Act). The Special Officer (B) who heard the Demolition Case, passed an order dated 9 September, 1999 directing both the petitioner and the private respondent no.4 to retain a common partition wall in conformity with the sanctioned building plan by shifting its present position to what was actually shown in the building plan under the supervision of an officer of the Kolkata Municipal Corporation.

(e) Being dissatisfied with the order dated 9 September, 1999, the private respondent no.4 filed an appeal before the Tribunal which was numbered as B.T Appeal No. 32 of 1999. By an order dated 15 August, 2009 the Tribunal set aside the order dated 9 September, 1999 on the ground that the same was passed illegally and without jurisdiction.

(f) The petitioner then filed a writ petition being WP No.1124 (W) of 2002 before this Honâble Court. By an order dated 13 June, 2006 a Single Judge of this Court set aside the order of the Tribunal and directed the Tribunal to pass orders in accordance with law and in terms of Section 400 (1) of the said Act. Being aggrieved by the order passed by the Single Judge dated 13 June, 2006, the private respondent no.4 filed an appeal. By an order dated 2 January, 2007, the Honâble Division Bench disposed of the appeal and refused to interfere with the order of the Single Judge.

(g) Thereafter, B.T Appeal No.32 of 1999 was taken up for hearing. By an order dated 1 August, 2008 (â??the impugned orderâ??) the Tribunal

allowed the appeal of the respondent no.4 and set aside the order of the Special Officer dated 9 September, 1999 on inter alia the following grounds:

i) That no sanction plan was placed before the Tribunal in order to establish that there was a deviation of the plan in raising of the internal partition

wall.

ii) The order of the Special Officer (Building) was silent as to in whose favour the plan had been sanctioned.

iii) There was no infringement of the Building Rules of the Kolkata Municipal Corporation in shifting such wall.

iv) There was nothing to show as to whose instance the District Building Inspector had visited the flat.

v) The order of the Special Officer (Building) was silent as to the recitals of the registered deed and the legal consequences after the execution of the

order of demolition and reconstruction of the shifting of the wall.

vi) According to the Tribunal, the disputes between the petitioner and the private respondent no.4 were of a civil nature and therefore, could not be

decided by the Tribunal. Moreover, according to the Tribunal a civil suit was also pending between the parties.

(h) It is this order dated 1 August, 2008 (â??the impugned orderâ??) passed by the Tribunal whereby the order dated 9 September, 1999 was set aside

which is the subject matter of challenge in this petition. Notwithstanding directions having been given as far back as 2009 neither the Kolkata

Municipal Corporation nor the private respondent no.4 chose to file any affidavit in opposition to the writ petition. The matter was taken up for hearing

on diverse dates and both the petitioner and the Municipal Corporation filed their respective Notes of Arguments.

3. The petitioner challenged the impugned order on the ground that the same was misconceived and unwarranted. It was alleged on behalf of the

petitioner that the Tribunal had failed to appreciate the true scope, purport and ambit of Section 400 (1) and that the Tribunal failed to properly

exercise its jurisdiction. It was further alleged that there was an error apparent on the face of the records and the Tribunal has failed to take into

consideration the records of the demolition case and that the Tribunal had

completely ignored the documentary evidence of the demolition case in passing the impugned order. It was further alleged on behalf of the petitioner that the Tribunal failed to act on the directions of the High Court. The petitioner further alleged that there was no justification or foundation in the findings of the Tribunal that the disputes between the parties were civil in nature. The petitioner further alleges that the Tribunal erred in ignoring and disregarding the entire proceedings which arose out of the Demolition Case No.54-D/1999-2000 and erred in law in holding that the Special Officer had no jurisdiction to deal with the matter of unauthorized construction.

4. The crux of the grievance of the petitioner was directed against the findings of the Tribunal insofar as it did not deal with the order of the Special

Officer nor its legality, validity or justification. The petitioner relied on the judgment reported in (2012) WB.LR (Cal) 611 (Sital Chandra Bodhak vs.

Howrah Municipal Corporation and Ors.) and (2012) AIR SCW 5463 (Dipak Kumar Mukharjee vs. Kolkata Municipal Corporation and Ors)

contending that similar errors of jurisdiction had been committed in this case.

5. Counsel on behalf of the Kolkata Municipal Corporation primarily argued on the limits of the Writ Court whilst hearing a petition of this nature. He

submitted that there was no error of law apparent on the face of the record and the impugned order did not warrant any interference at all. He

submitted that the entire case of the writ petitioner and the private respondent no.4 had been heard dispassionately and the impugned order reflected

the proper consideration of the facts and circumstances of the case. He submitted that the disputes between the parties were essentially of a civil

nature and that a civil suit was the most appropriate remedy. He relied on the Supreme Court decisions reported in AIR 1989 SC 997 and (1997) 8

SCC 715 to bring out the distinction between an error apparent on the face of record and an erroneous decision. He submitted that

judicial review was only limited to correct errors apparent on the face of the record and no interference was warranted in the facts and circumstances

of the instant case.

6. I have considered the rival submissions between the parties and the pleadings filed on their behalf. At the outset, it is a pity and extremely

unfortunate that a dispute such as the present one has been pending adjudication for more than two decades before different fora. The petitioner has

been running from pillar to post for justice and unfortunately, even at this stage, I am for the reasons mentioned hereinbelow unable to bring an end to this litigation.

7. As mentioned earlier, the sole grievance of the petitioner is one of the alleged unauthorized construction and deviation in the matter of a partition at

his residential home. According to the petitioner, there was a variation of 0.8 meters on the eastern side. Thus, it was alleged on behalf of the

petitioner that the partition wall had been shifted and he lodged a complaint following which there was an inspection. Thereafter, a notice under

Section 400 (1) was issued on the parties which highlighted the unauthorized construction. On the basis of the said notice the demolition case being

Demolition Case No. 54-D/1999-2000 was initiated, the hearing was conducted and after hearing the parties and considering the facts and

circumstances of the case the order dated 9 September, 1999 was passed. The order categorically found that the partition wall was in deviation from

the sanctioned plan. The order dated 9 September, 1999, further directed the parties to retain a common partition wall in conformity with the

sanctioned plan by shifting it from the present position to its actual position as shown in the building sanctioned plan.

8. I am fully mindful of the limits of the Writ Court whilst hearing an appeal of this nature. The scope of interference is rather limited. Where a fact

finding authority was aware of the objection of the writ petitioner and the Appellate Authority has passed an order, the High Court ordinarily in

exercise of its jurisdiction under Article 226 of the Constitution of India ought not to reappraise the matter. All that the High Court has to ascertain is

whether the procedure adopted by the Authority under the relevant statute and the order that finally came to be passed was rational and reasonable.

Once the High Court was satisfied that the order complained of was passed by an authority possessing jurisdiction and that the procedure adopted

was reasonable and the process of adjudication culminated in a cogent decision the High Court ought not to look any further. It is well settled and has

been repeatedly reiterated by all the High Court including the Honâ??ble Supreme Court that the authority of the High Court in such a situation is

supervisory and not of an appellate nature and a Writ Court ought ordinarily to find out the view which has taken is a possible view on a set of facts

which presented themselves before an executive or a quasi-judicial authority. It is not the role of the High Court to supplant its views over what has

been expressed by the appropriate authority even if the High Court perceives its view to be more plausible. However, there are well-settled

exceptions to the above rule. One such exception is when the order impugned shocks the conscience of the Court in the sense that no reasonable

person in the executive position or quasi-judicial authority could pass such an order on the set of facts before it. Another well-settled exception is

where there is a clear error apparent on the face of the record or that the Authority has not applied its mind to the facts and circumstances of the

case or has omitted any relevant piece of evidence in passing the impugned order.

9. After having carefully considered the impugned order in the background of the facts and circumstances of the case, I am compelled to hold that

there has been an abdication of jurisdiction on the part of the Tribunal in passing the impugned order. The complaint of the petitioner related to

unauthorized alteration or deviation from the sanctioned plan. This in my view was in the nature of classic complaint which ought to have been

exclusively decided by the Tribunal. A perusal of the records of demolition case no.54-D/1999-2000 show that the concerned Special Officer

(Building) had taken into account a building sanctioned plan no.11 dated 3 April, 1975. This aspect of the matter was completely ignored by the

Tribunal in passing the impugned order. The Tribunal proceeded on the basis as if the disputes between the parties were civil in nature. I am unable to

find any civil dispute which required the consideration of oral evidence or examination-in-chief or cross-examination in the facts and circumstances of

the case. In my view, the Tribunal erred both in law and on facts in directing that the parties to agitate their grievances before a civil forum. I am

compelled to hold that the Tribunal in passing the impugned order dealt the matter in a casual and cavalier manner without appreciating its own

jurisdiction and powers under the said Act and the Rules framed thereunder. The reasons furnished by the Tribunal in the impugned order are trivial

and legally untenable. I am also of the view that the Tribunal in passing the impugned order glossed over the directions of the Honâ??ble High Court

passed in the revisional application being CO No.492 of 2008 and the order passed by the learned Single Judge in WP No.1124 of 2002 dated 30

August, 2006 and failed to give due consideration to both the orders passed by the High Court. Another unacceptable feature in the impugned order is

the total disregard by the Tribunal to the findings and documentary evidence before the Special Officer in Demolition Case No.54-D/1999-2000. In my

view, the Tribunal was duty bound to deal with the findings and the documentary evidence which had been placed in Demolition Case No.54-D/1999-

2000. On the contrary, on a perusal of the impugned order, it is evident that the Tribunal erred in totally disregarding the records of the Demolition

Case No.54-D/1999-2000 and failed to appreciate with the same. The Tribunal erred in not dealing with the findings in the order dated 9 September,

1999 passed by the Special Officer or the documentary evidence relied thereon. There is no factual foundation on facts in the Tribunal's order for

arriving at its conclusion that a suit was pending before any fora between the parties.

10. Quite clearly, the Tribunal failed to appreciate, the true scope and ambit of Section 400 of the said Act and the provisions of Section 400 (1) and

400 (5) of the said Act. The short question to be decided by the Tribunal was whether there was a deviation from the sanctioned plan or not and if

there was a deviation to be found what were the consequences that should follow. In my view, the Tribunal skirted around the central issues and

decided the appeal in a perfunctory manner ignoring its powers under Section 415 of the said Act. None of the grounds contained in the impugned

order appears to have any legal or factual foundation. Accordingly, I find that there has been a clearly erroneous exercise of jurisdiction on the part of

the Tribunal in passing the impugned order. For the foregoing reasons, the impugned order dated 1 August, 2008 passed in B.T Appeal No.32 of 1999

is set aside and quashed. The matter is remanded back to the Tribunal and the appeal should be heard positively within a period of 12 weeks from the

date of the communication of this order to the Tribunal.

11. It is needless to mention that in considering the appeal the Tribunal will not only take into consideration this order but also the earlier directions

passed by the Hon'ble High Court dated 30 August, 2006 passed in WP No.1124 of 2002 and 22 January, 2007 passed in MAT No.3809 of 2006,

CAN No.845 of 2006 passed by the Hon'ble Division Bench and 20 March, 2008 passed in CO No.492 of 2008. WP No.783 (W) of 2009 is

allowed in terms of the aforesaid directions. However, there will be no order as to costs. Nothing contained in this order is to be treated as binding on

the merits of the appeal pending before the Tribunal and the Tribunal is at liberty to decide and dispose of the appeal in accordance with law.

12. Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities.